

**CITY OF WEST DES MOINES  
BOARD OF ADJUSTMENT COMMUNICATION**

**Meeting Date:** February 11, 2015

**Item:** 503 Restaurant and Nightclub, 1238 8<sup>th</sup> Street – Approval of a 6,500sf bar in conjunction with a restaurant – PC-002584-2015 – Carlos Barco

**Requested Action:** Approval of a Permitted Conditional Use Permit

**Case Advisor:** Brian Portz, AICP *BP*

**Applicant's Request:** The applicant, Carlos Barco, in conjunction with the property owner, James Flynn, are requesting approval of a Permitted Conditional Use Permit to allow operation of an approximately 6,500sf Drinking Establishment (SIC 5813) within the existing building at 1238 8<sup>th</sup> Street. The applicant is proposing a restaurant on the site that will also serve alcohol. The property is zoned Support Commercial (SC) District. Per the Zoning Code, Restaurants (SIC 5812: no drive-thrus) are a Permitted (P) use, while Drinking Establishments (SIC 5813) are a Permitted Conditional (Pc) use.

Drinking Establishments are defined as those eating and drinking places in which 50% or greater of the revenue is from the sale of alcohol; while a restaurant is 50% or more from the sale of food. The applicant indicated that the business will primarily operate as a restaurant, but that sales from food and alcohol may be very close to the 50% threshold, especially on weekends. Because of this, staff advised the applicant that it would be in their best interest to seek approval for a Drinking Establishment which would ensure compliance with City Code should the sale of alcohol on occasion exceed 50% of the total revenue for the establishment.

**History:** The subject property was platted in 1971 as a part of Colby's Office Park. The building was previously the location of Jimmy's American Café, Angelo's, and The Q.

**City Council Subcommittee:** This item was not presented to the Development & Planning City Council Subcommittee. Permitted Conditional Use applications generally are presented to the subcommittee for information only; no recommendation or communication from the subcommittee is needed.

**Staff Review and Comment:** There are no outstanding issues.

**Permitted Conditional Use Permit Findings:** The following findings have been made on the proposed permitted conditional use:

1. The proposed development and use is consistent with the West Des Moines Comprehensive Plan in that the project has been reviewed for consistency with the Comprehensive Plan. Based upon that review, a finding has been made that the proposed project is consistent with the Comprehensive Plan in that the project is consistent with all of the goals and policies of the Comprehensive Plan *with the exception that the public street right-of-way for 8<sup>th</sup> Street is deficient five feet (5') from the 120' of required total right-of-way (60' half right-of-way) as specified in the City's adopted Comprehensive Plan.*
2. The proposed development and use does assure compatibility of property uses within the zone and general area in that this project was reviewed by various City Departments for compliance with the Zoning Ordinance.
3. All applicable standards and conditions have been imposed which protects the public health, safety and welfare in that this project was reviewed by various City Departments and public agencies for compliance with the various state and local regulations. Based upon that review a finding is made that the project has been adequately conditioned to protect the health, welfare, and safety of the community.
4. There is adequate on-site and off-site public infrastructure to support the proposed development in that this project was reviewed by various public agencies and City Departments and public utilities to ensure that

either the petitioner will construct or the project has been conditioned to construct adequate public infrastructure to serve the development.

5. The proposed development and use have met the requirements contained in the City Code in that this project was reviewed by various City Departments and public agencies and the project has complied with or has been conditioned to comply with all City Code requirements. *The existing sanitary sewer easement is deficient 11' in width per DSM Metro Design Standards and WDM Addendums which requires a minimum 30' in width or 2x the depth, whichever is greater.*
6. The proposed development and use is in keeping with the scale and nature of the surrounding neighborhood in that the proposed project is consistent with the Zoning regulations and the Comprehensive Plan which designates this site as suitable for development such as that proposed by this project.

**Noticing Information:** On January 23, 2015, notice of the February 11, 2015, Board of Adjustment Public Hearing on this project was published in the *Des Moines Register*. Notice of this public hearing was mailed to surrounding property owners within 370 feet of the subject property on January 22, 2015.

**Staff Recommendations and Conditions of Approval for the Permitted Conditional Use Permit:** Based upon the review of the proposal, a finding of consistency with the goals and policies of the Comprehensive Plan, and compliance with the findings necessary for approval, staff recommends the Board of Adjustment adopt a resolution for approval of the Permitted Conditional Use Permit to allow an approximately 6,500sf Drinking Establishment (SIC 5813) in conjunction with a restaurant at 1238 8<sup>th</sup> Street, subject to meeting all City Code requirements and regulations and the following:

1. The existing rocks within the 8<sup>th</sup> Street right of way shall be removed prior to issuance of a final occupancy permit for the building; and
2. Prior to a final occupancy permit being issued, the property owner shall provide the City with an Irrevocable Offer of Right-of-Way Dedication for five (5) additional feet of public street right-of-way for 8<sup>th</sup> Street adjacent to the subject property; and
3. Prior to a final occupancy permit being issued, the property owner shall provide a public sewer easement to the city providing for an additional 11 feet of easement width.

**Applicant:** Carlos Barco  
2624 Warford Street  
Perry, IA 50220

**Property Owner:** James Flynn  
P.O. Box 71545  
Clive, IA 50325  
[joejsaylor@aol.com](mailto:joejsaylor@aol.com)

**Attachments:**  
Attachment A - Permitted Conditional Use Resolution  
Exhibit A - Conditions of Approval  
Attachment B - Location Map

Prepared by: B. Portz, Development Services PO Box 65320 West Des Moines IA 50265-0320 515-222-3620  
When Recorded, Return to: City Clerk, City of West Des Moines PO Box 65320 West Des Moines IA 50265-0320

**RESOLUTION**

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES, APPROVING A PERMITTED CONDITIONAL USE PERMIT (PC-002584-2015) TO ALLOW SIC 5813: DRINKING ESTABLISHMENT AT 1238 8<sup>TH</sup> STREET**

**WHEREAS**, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, the applicant, Carlos Barco, in conjunction with the property owner, James Flynn, have requested approval of a Permitted Conditional Use permit to allow operation of an approximately 6,500sf Drinking Establishment (SIC 5813) in conjunction with a restaurant within the existing building at 1238 8<sup>th</sup> Street, and legally described as follows:

Legal Description of Property  
**Lot 9, Colby's Office Park, an official plat within  
the City of West Des Moines, Polk County, Iowa.**

**WHEREAS**, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference;

**WHEREAS**, on February 11, 2015, the Board of Adjustment held a duly-noticed public hearing to consider the application for Permitted Conditional Use Permit (PC-002584-2015);

**NOW, THEREFORE, THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:**

**SECTION 1.** The findings, for approval, in the staff report, dated February 11, 2015, or as amended orally at the Board of Adjustment hearing of February 11, 2015, are adopted.

**SECTION 2.** PERMITTED CONDITIONAL USE PERMIT (PC-002584-2015) to allow an approximately 6,500sf Drinking Establishment (SIC 5813) in conjunction with a restaurant within the existing building at 1238 8<sup>th</sup> Street is approved, subject to compliance with all the conditions in the staff report, dated February 11, 2015, including conditions added at the Hearing, and attached hereto as Exhibit "A", if any. Violation of any such conditions shall be grounds for revocation of the entitlement, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on February 11, 2015.

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Jenny Drake, Board of Adjustment

ATTEST:

\_\_\_\_\_  
Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Board of Adjustment for the City of West Des Moines, Iowa, at a regular meeting held on February 11, 2015, by the following vote:

AYES:  
NAYS:  
ABSTAIN:  
ABSENT:

ATTEST:

\_\_\_\_\_  
Recording Secretary

Exhibit A  
Conditions of Approval

1. The existing rocks within the 8<sup>th</sup> Street right of way shall be removed prior to issuance of a final occupancy permit for the building; and
2. Prior to a final occupancy permit being issued, the property owner shall provide the City with an Irrevocable Offer of Right-of-Way Dedication for five (5) additional feet of public street right-of-way for 8<sup>th</sup> Street adjacent to the subject property; and
3. Prior to a final occupancy permit being issued, the property owner shall provide a public sewer easement to the city providing for an additional 11 feet of easement width.





166.7 0 83.33 166.7 Feet

NAD\_1983\_StatePlane\_Iowa\_South\_FIPS\_1402\_Feet  
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Disclaimer: The City of West Des Moines makes no warranties regarding the accuracy or completeness of the data provided herein.

THIS MAP IS NOT TO BE USED FOR NAVIGATION